

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA	§	
	§	
Plaintiff,	§	
v.	§	Case No.: SA-22-CR-219-FB
	§	
	§	
GAVIN BLAKE DAVIS	§	
Defendant.	§	

**GOVERNMENT’S NOTICE OF INTENTION TO OFFER
DOMESTIC RECORDS OF REGULARLY CONDUCTED
ACTIVITIES AND PUBLIC RECORDS AND MOTION TO DEEM ADMISSIBLE**

The United States of America hereby files its notice for admission of certain business and electronic records by certification pursuant to Fed. R. Evid. 803(6), 902(11), and 902(13).

The Government obtained the following business and electronic process records during its investigation and provided those records to the defense during discovery. The business record providers provided certifications of business and electronic process records which are attached to this notice and motion as Exhibits 1 & 2. The following records and certifications were obtained:

1. Google Inc., documents for GAVINPRIVATE96@gmail.com, hash values for production:

gavinprivate96@gmail.com.426018443926.GoogleAccount.SubscriberInfo_001.zip:
MD5- d4265aa1d347d826a29761120eabbc0d
SHA512-
0d402a7c5a6312b37677699306f349ffdf6ae0372abcc6b3b2875220df901b29f3af89f25d8fba8d87
3eb2cd00a2dee4fe0a30d5489cdcaa39e927f3b3f827f9
gavinprivate96@gmail.com.426018443926.GooglePay.CustomerInformation_001.zip:
MD5- 79af6fa87e410852ed8f558a42cf9d00
SHA512-
d8ad0e1c7b022efc2db7e6c1ed500fd355ce67cb68938aa2ad44ac9d4508b7728e448880882f32741
0475bb92c4e27b7b11d0cbf1e923aadba909f086dca922e

These documents include the following: Google subscriber information belonging to Gavin Davis for GAVINPRIVATE96@gmail.com, google account ID information, and IP activity. A copy of the documents and business records affidavit for Google is attached as Exhibit 1.

2. Google Inc., documents for GAVINPRIVATE96@gmail.com, hash values for production:

	gavinprivate96.Chats.Preserved.zip:
	MD5- 151d41c7cb63c198a9cb530d3d0a172f
	SHA512-
	e795358fa4cd7c450084e5c0931c2b3862889ab237a87a4e1dbe4be10c48951895a08879bc
7944dc	
	655e06a389baae6723cbb96c108d580d7c9adf420dbcbbcb7
	gavinprivate96.Drive.Metadata.Preserved.zip:
	MD5- 255e3da3a9fc6e87420b4bb33c08ab0d
	SHA512-
	62057ac920f06af721ccacd50a9c5db60210a3ab47a5b0fedd08947fe2f148be9cfd74ba2a5d
2eccbe0	
	93454599e74b6bfd85cb9cdef47a2c009ccd093a30e2d
	gavinprivate96.Drive.Metadata.zip:
	MD5- 120eb9a44f83b2ad7a449b641165b3a7
	SHA512-
	45c6c024119a802d471580a0d7b1fe2193c9743e508141fe136bce9132412f04f9d55bec74
535bd82	
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	gavinprivate96.Drive.zip:
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97d352f	
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gavinprivate96@gmail.com.426018443926.GoogleChat.GroupInfo_001.Preserved.zip:
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56139d

04e79809ee15607e9b67011694545e58a2d7b0e17b8eef5

These documents include the following: e-mails belonging to Gavin Davis sent from GAVINPRIVATE96@gmail.com between October 22, 2020 and May 19, 2021, along with additional data and files associated with the GAVINPRIVATE96@gmail.com address that were retained as such by Google LLC. A copy of the documents and business records affidavit for Google is attached as Exhibit 2.

“Relevant evidence is admissible[.]” FED. R. EVID. 402. Evidence is relevant if it has “any tendency to make a fact more or less probable than it would be without the evidence,” and “the fact is of consequence in determining the action.” FED. R. EVID. 401. Relevant evidence should be admitted unless its probative value is substantially outweighed by the danger of unfair prejudice. FED. R. EVID. 403.

The Federal Rules of Evidence generally prohibit the admission of hearsay evidence absent certain exceptions. *See* Fed. R. Evid. 801, 802.

One of those exceptions is embodied in Rule 803(6), which states that business records or, more specifically, “records of a regularly conducted activity,” may be admitted if they are accompanied by a certification of their custodian or another qualified witness that the records were (A) “made at or near the time by - or from information transmitted by – someone with knowledge”; (B) “kept in the course of a regularly conducted activity of a business”; and (C) “making the record was a regular practice of that activity.” FED. R. EVID. 803(6).

The Federal Rules of Evidence also generally require documents to be authenticated as a

condition precedent to admissibility, though again, there are exceptions. FED. R. EVID. 901, 902.

One such exception is for self-authenticating documents. Rule 902(11) states that records of a regularly conducted activity need not be authenticated at trial if they are accompanied “by a certification of the custodian or another qualified person” attesting that they meet each of the requirements of Rule 803(6). FED. R. EVID. 902(11). Likewise, Rule 902(13) states that records “generated by an electronic process or system that produces an accurate result” may also be admitted solely using a certification that meets the requirements of Fed. R. Evid. 902(11). *See* FED R. EVID. 902(13).

To meet this authentication requirement, the proponent of the evidence must “provide written notice . . . to all adverse parties” of its intention to offer the record into evidence under that rule and must “make the record and declaration available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge them.” *See* Fed R. Evid. 902(11) & (13).

The Confrontation Clause of the Sixth Amendment provides that “[i]n all criminal prosecutions, the accused shall enjoy the right... to be confronted with the witnesses against him.” U.S. Const. amend. VI.

In *Crawford v. Washington*, 541 U.S. 36 (2004), the Supreme Court held that, under the Confrontation Clause, “testimonial” statements of a witness who does not appear at trial cannot be admitted against a criminal defendant unless the witness is unavailable and was previously subject to cross-examination by the defendant. *Id.* at 53-54. “Testimonial” hearsay, the Court explained, is typically a solemn declaration or affirmation made for the purpose of establishing or proving some fact, under circumstances which would lead an objective witness reasonably to

believe that the statement would be available for use at a later trial. *Id.* at 51.

The Supreme Court, however, has also recognized that business records are “statements that by their nature [are] not testimonial.” *Id.* at 56; *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 310 (2009) (“Business and public records are generally admissible absent confrontation not because they qualify under an exception to the hearsay rules, but because – having been created for the administration of an entity’s affairs and not for the purpose of establishing or proving some fact at trial - they are not testimonial.”); accord *United States v. Feliz*, 467 F.3d 227, 233-37 (2d Cir. 2006).

Federal Rule of Evidence 104(a) provides that “[p]reliminary questions concerning... the admissibility of evidence shall be determined by the court.” FED. R. EVID. 104(a). In making any such preliminary determination, courts are not bound by the rules of evidence, except those on privilege, *see id.*, or by the Confrontation Clause. *See, e.g., Bourjaily v. United States*, 483 U.S. 171, 178 (1987).

Accordingly, this Court can review the business records certifications in advance of trial (see the attached exhibits), decide whether it meets the requirements of Rule 902(11), and rule accordingly on the admissibility of the records themselves.

Because the purpose of requiring a custodial witness is merely to establish the authenticity of the business and electronic records, and because the question of authenticity is merely a threshold to admissibility, which is a matter this Court can determine in advance of trial, without regard to the Federal Rules of Evidence, it would not be an affront to Davis’ right of confrontation to allow the identified documents to be admitted through records certification.

Lastly, Federal Rule of Evidence 611(a) gives the trial court the ability to exercise reasonable control over the mode and order of presenting evidence. FED. R. EVID. 611(a). This

rule should be used by the trial court to: (1) make those procedures effective for determining the truth; (2) avoid wasting time; and (3) protect witnesses from harassment or undue embarrassment. Requiring the Government to call a custodian of records to testify when a completed business record affidavit is readily available and admissible under FRE 803(6), 902(11), and 902(13), would be a waste of the Court's time. *See Id.*

For all of the foregoing reasons, the Court should deem the Google records authenticated by certification and admissible without further need for testimony from custodian of records witnesses to authenticate the records.

Respectfully submitted,

JAIME ESPARZA
UNITED STATES ATTORNEY

By: /s/
Zachary W. Parsons
Assistant United States Attorney
State Bar No. 24104449
601 NW Loop 410, Suite 600
San Antonio, Texas 78216
Zack.Parsons@usdoj.gov

CERTIFICATE OF SERVICE

A copy of the foregoing has been served on Pro Se Defendant at:

Gavin B. Davis, #00197510
KCDF
810 Commerce Street
Karnes City, TX 78118

I further hereby certify that on this the 31st day of May 2024, a true and correct copy of the foregoing instrument was electronically filed with the Clerk of the Court using the CM/ECF System providing notice to Tom Moore, standby counsel for Defendant.

/s/
Zachary W. Parsons
Assistant United States Attorney

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA	§	
	§	
Plaintiff,	§	
v.	§	Case No.: SA-22-CR-219-FB
	§	
GAVIN BLAKE DAVIS	§	
Defendant.	§	

ORDER

On this day, the Court considered the Government's Notice Pursuant to Federal Rules of Evidence 803(6), 902(11), and 902(13) in the above-styled and numbered cause. The Court finds that said motion should be GRANTED. It is therefore ORDERED that the business records received from Google are hereby authenticated pursuant to FRE 803(6), 902(11) and 902(13) and deemed admissible without further need for authentication.

SIGNED this _____ day of June, 2024.

FRED BIERY
U.S. DISTRICT COURT JUDGE